

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. WILFRED FEINBERG,
HON. JON O. NEWMAN,
HON. CHESTER J. STRAUB,
Circuit Judges.

Peng Li,

Petitioner,

-v.-

No. 04-5374-ag
NAC

US Department of Justice,
Executive Office for Immigration Review,
Board of Immigration Appeals,

Respondents.

FOR PETITIONER: Lawrence S. Kerben, Kew Gardens, New York.

FOR RESPONDENT: Bud Cummins, United States Attorney for the Eastern District of
Arkansas, Fletcher Jackson, Assistant United States Attorney,
Little Rock, Arkansas.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND
DECREED that this petition for review of the Board of Immigration Appeals (“BIA”) decision

is DISMISSED.

Li Peng, through counsel, petitions for review of the BIA's September 2004 decision affirming Immigration Judge ("IJ") Sandy K. Hom's denial of her application for asylum. *In re Li Peng*, No. A 96 248 505 (BIA Sept. 9, 2004); No. A 96 248 505 (Immig. Ct. N.Y. City June 23, 2003). We assume the parties' familiarity with the underlying facts and procedural history.

Title 8, Section 1158(a)(3) of the United States Code provides that no court shall have jurisdiction to review the agency's finding that an asylum application was untimely under 8 U.S.C. § 1158(a)(2)(B), or its finding of neither changed nor extraordinary circumstances excusing the untimeliness under 8 U.S.C. § 1158(a)(2)(D). Notwithstanding that provision, however, this Court retains jurisdiction to review constitutional claims and "questions of law." 8 U.S.C. § 1252(a)(2)(D). Here, Li argues that her mental illness should have qualified as an extraordinary circumstance that excused her untimely-filed asylum application. This is not a "question of law" but rather a purely factual question that we do not have jurisdiction to review.

The petition for review is therefore DISMISSED.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____